IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

OP.No. 34832 of 2000(V)

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PETITIONER:

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1. KERALA GOVERNMENT HOMOEO,
PHARMACISTS ASSOCIATION,
REP.BY ITS GENERAL SECRETARY,
'ASHADAM', THIRUVANNUR NADA P.O.,
CALICUT-29

2. D.VIJAYAN,
OLOPPILLY HOUSE,
KODANAD P.O.,
VIA PERUMBAVOOR,
ERNAKULAM.

BY ADV. SRI.P.SANJAY

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT
OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF HOMOEOPATHY,
HOMOEOPATHY DEPARTMENT,
THIRUVANANTHAPURAM.

3. N.B.SOMAN (DHMS),
PHARMACIST,
GOVT. HOMOEO DISPENSARY,
KALIKAVU, MALAPPURAM.

ADDL.RESPONDENT NO.4 IMPLEADED AS PER ORDER ON C.M.P.NO.4812/2001, DATED 12/2/2001

ADDL.4. S.SHYLESHKUMAR, MEDICAL OFFICER,
NON CADRE (PHARMACIST),
GOVT.HOMOEO DISPENSARY, KANIYAMPETTA,
WAYANAD DISTRICT.

ADDL.RESPONDENT NO.5 IMPLEADED AS PER ORDER ON C.M.P.NO.2910/2001 DATED 07/02/2006

ADDL.5. KERALA HOMOEO MEDICAL GRADUATES
ASSOCIATION, REGISTRATION NUMBER 154/87,
LAYAM ROAD, TRIPPUNITHURA,
ERNAKULAM DISTRICT, REPRESENTED BY
ITS GENERAL SECRETARY DR.V.K.AJITH KUMAR.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
SRI.KRB.KAIMAL (SR.)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 34832 of 2000(V)

APPENDIX

ORDER ON C.M.P.NO.34832/2000 in OP.No. 34832 of 2000(V)

CLOSED.

SD/-THOTTATHIL B.RADHAKRISHNAN, JUDGE

04/06/2007

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE G.O.P.NO.135/99/HFWD, DATED 12/4/99 ISSUED BY THE 1ST RESPONDENT

EXT.P2 TRUE COPY OF GO PUBLISHED AS SRO NO.584/99 IN KERALA GAZETTE (EXTRA ORDINARY)

EXT P3 TRUE COPY OF THE CIRCULAR NO.EA2/1171/99/D.H.DATED 5/2/99 ISSUED TO THE 3RD RESPONDENT.

EXT.P4 TRUE COPY OF THE GO RT NO.3059/2000/H&FWD, DATED 7/8/2000 ISSUED BY THE 1ST RESPONDENT.

EXT.P5 TRUE COPY OF THE ORDER IN CMP NO.57693/2000 IN OP 33773/2000 BEFORE THE HON'BLE HIGH COURT.

EXT.P6 TRUE COPY OF THE ORDER NO.7589/EA2/2000/DH DATED 19/10/2000 BY THE 3RD RESPONDENT.

\\TRUE COPY//

**THOTTATHIL B. RADHAKRISHNAN, J**

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O.P.No. 34832 of 2000

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Dated this the 4th day of June, 2007

**J U D G M E N T**

The second petitioner is a pharmacist, governed by the Special Rules for the Kerala Homoeopathy Sub-ordinate Service, hereinafter referred to as 'the Sub-ordinate Service Rules'. The first petitioner is an Association of similar persons, including the second petitioner.

2. This original petition is filed challenging Ext.P4 decision of the Government and consequential action.

3. Medical Officers in the Homoeopathy Department are governed by the Special Rules for the Kerala State Homoeopathy Service, hereinafter referred to as 'the State Service Rules', which, inter alia, provide promotion from the category of Pharmacists, as a method of appointment to the category of Medical Officers. Such promotion is available to those Pharmacists, who possess the

qualifications prescribed for Medical Officers.

4. The State Service Rules and the Sub-ordinate Service Rules are made by the Government in exercise of power under Section 2 of the Kerala Public Service Act, 1968, hereinafter referred to as 'the Act'.

5. The Pay Commission, in its report of 1997, observed that there are 25 qualified Homoeo Doctors, who were recruited as Pharmacist in the Homoeo Department. The Pay Commission recommended that those 25 posts may be upgraded to a scale indicated by the Pay Commission, which was a scale in between that of the Medical Officer and the Pharmacist. Such recommendation was accepted by the Government and the impugned Ext.P4 Government Order was issued in tune with the Pay Commission recommendation by upgrading the 25 posts held by those 25 Pharmacists, who were qualified to be Homoeo Doctors, and those 25 posts were treated as ex-cadre posts and those officers were re-designated as Non-cadre Medical Officers. By doing so, their scale was fixed in between that of the Cadre

Medical Officers and the Pharmacists, as recommended by the Pay Commission. It was clarified that their absorption into the regular service would only be in terms of the State Service Rules, which, as already noticed, provides a venue of entry for them from the category of Pharmacist. In so far as duties and responsibilities are concerned, the Non-cadre Medical Officers were to continue to discharge the duties and responsibilities attached to the posts of Pharmacist, and also to assist the Medical Officer, but not to function as Medical Officers, as such.

6. The contention of the petitioners is that the State Service Rules do not contemplate any category in between that of the Medical Officer, governed by those Rules, and the Pharmacist, governed by the Sub-ordinate Service Rules. Therefore, according to them, without amendment to the Special Rules, the Government would not have the authority to create a cadre of such a nature.

7. However, what has been done as per Ext.P4 is only to identify and isolate a particular group of persons as Non-cadre Medical Officers, clearly stipulating that they were bound to continue to

discharge the duties and responsibilities in the category of Pharmacist, to which, they really belong and are to assist the Cadre Medical Officers, but not entitled to function as Cadre Medical Officers and discharge the duties and responsibilities attached to the post of Cadre Medical Officers. The executive decision of the Government, contained in Ext.P4, was intended to give effect to the recommendation of the Pay Commission, to provide a particular administrative management of 25 persons, who were found to be qualified to be promoted as Medical Officers but were functioning as Pharmacists. The decisions so taken by the Government in exercise of its executive power is not an encroachment into any field occupied by the State Service Rules or the Sub-ordinate Service Rules. So much so, the action taken in the nature of Ext.P4 cannot be invalidated with reference to the State Service Rules or the Sub-Ordinate Service Rules, read with Section 2 of the Act.

8. Not only that, the petitioners, who were Pharmacists and who admittedly are not qualified to be considered for appointment as Medical Officers (Cadre), cannot make out a case of injustice or illegality in the matter of Ext.P4, as having affected any of their

legitimate or fundamental rights. So much so, the challenge against Ext.P4, in writ jurisdiction, fails.

9. Be that as it may, it is pointed out on behalf of the petitioners that while it is stated in Ext.P4 that the parking of the 25 identified persons as Non-cadre Medical Officers would not effect the Cadre Medical Officers, it should have also been clarified that such benefit given to the 25 Pharmacists, merely, on account of their higher qualification should not in any manner effect the seniority and other matters touching those in the category of Pharmacists. It goes without saying that Ext.P4, being only an executive decision, cannot effect the inter-se rights of the Pharmacists, even if a group of them are, by an executive decision, parked as Non-cadre Medical Officers. This means that the culling out of the 25 persons, and their placement as Non-cadre Medical Officers do not in any manner give them any priority over other Pharmacists, and they will be treated as Pharmacists for all intents and purposes, on the basis of the Sub-ordinate Service Rules and the State Service Rules. It is so declared.

10. In the result, the relief sought for, to quash the impugned Ext.P4 and the action that followed it, is refused, while granting the declaration as made above.

The original petition is disposed of in the above terms.

**THOTTATHIL B.RADHAKRISHNAN,**
**Judge**

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**THOTTATHIL B. RADHAKRISHNAN, J.**

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O.P.No. 34832 of 2000

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**J U D G M E N T**

4th June, 2007